

Remarks

This Amendment is in response to the Non-Final Office Action dated **August 16, 2010**. In this non-final Office Action the previous rejections were withdrawn in lieu of new rejections.

In the current office action claims 23, 29, 30, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brand (US Patent Application No. 200310183226) in view of "Pipetman - Care and Maintenance", published 2001, referred to hereinafter as 'Pipetman'. Claims 24 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brand (US Patent Application No. 2003/0183226) in view of Boldt (US Patent No. 5,328,597). Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brand (US Patent Application No. 200310183226) in view of "Pipetman - Care and Maintenance", published 2001, referred to hereinafter as 'Pipetman', further in view of Boldt (US Patent No. 5,328,597).

In response to the office action claims 24 and 37-39 have been cancelled, pending a decision to pursue those claims in a continuation application. Applicants respectfully traverse the obviousness rejections to claims 23, 27, 29, 30 and 34-36.

§103 Rejections

The Examiner rejects claim 23 as being unpatentable over Brand (US 2003/0183226 A1) in view of "Pipetman".

The Office Action states that Brand is not as detailed with the application-related data being maintenance and/or repair data and asserts that Pipetman discloses the stored data being maintenance and/or repair data. The office action refers to the entire document (pages 1-16), and no specific citation is given.

The claimed maintenance and/or repair data are stored in the transponders 3, when

during the application 1 of the proportioning device 5 maintenance and/or repair 11 of the proportioning device 5 is coming up (patent application [0065] lines 1 to 4). **Therefore the maintenance and/or repair data are related to the proportioning device 5.**

In Brand no application-related data related to the proportioning device consisting of a housing and the medicament container (Brand [0005] lines 1 to 4) **are stored on the transponders** (named in Brand: transceivers). All application-related data stored in the transceivers are data concerning the use of the medicament dispenser or the amount of the medicament remaining in the medicament container.

Application-related data stored in the transceivers concerning the use of the medicament dispenser are:

- name of prescriber [0008] line 7
- name of pharmacist [0008] line 7
- identification of patient [0008] line 8, [0017] lines 15 to 16
- distribution compliance information [0017] line 2
- customer information [0017] line 15
- distribution information [0017] line 16
- intended product destination [0017] line 17

Application-related data stored in the transceivers concerning the amount of the medicament remaining in the medicament container are:

- date and time of dispensing [0008] lines 6 - 7
- actuation of dispenser [0009] line 6, [0070] line 4
- dispensing data [0009] line 7
- dose count [0009] line 8

- compliance data [0009] line 9
- date and time stamps [0017] line 8
- dosing information [0017] lines 14 to 15
- history of the usage of the medicament dispenser [0027] lines 1 - 2
- release data [0074] line 4, [0075] line 5
- pressure effected by release [0075] line 6
- temperature effected by release [0075] line 6
- sound effected by release [0075] line 6
- moisture effected by release [0075] line 6
- chemical factors effected by release [0075] line 7
- carbon dioxide concentration effected by release [0075] line 7
- presence of released medicament [0075] lines 7 - 8
- presence of propellant [0075] lines 7 - 8

So Brand does not suggest storing application-related data related to the proportioning device.

Applicant disagrees that Pipetman discloses the stored data being maintenance and/or repair data, which are data related to the proportioning device. Pipetman is a guide to troubleshooting and repairing certain models of mechanical pipettes. Pipetman describes how to replace or service single parts of the pipette. Page 3 of Pipetman (cited against claims 29 and 30) lists observable symptoms and possible causes. Nothing is disclosed that any kind of data about maintenance or repairing the pipettes having to be recorded, in particular not in an electronic manner. Much less there is given any hint by Pipetman to store such data in a transponder.

Therefore, applicant does not see the relevance of Pipetman to the instant claims.

Finally, a person of ordinary skill in the art will not be motivated or taught by Brand to store application-related data related to the proportioning device in a transponder and will not be motivated by Pipetman to store data about maintenance of repairing at all.

The cited combinations fail to meet the limitations of claims 23, 27, 29, 30 and 34-36. It is only through impermissible hindsight that the rejections can be constructed, which is improper.

Applicant has cancelled claims 24 and 37-39 to advance prosecution and obtain allowance of claims 23, 27, 29, 30 and 34-36.

The allowance of claims 23, 27, 29, 30 and 34-36 is respectfully requested in view of the preceding comments.

Conclusion

Based on at least the above, Applicant respectfully submits that this application is in condition for allowance. Favorable consideration and prompt allowance of 23, 27, 29, 30 and 34-36 is requested.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

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